ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

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Related Bills: | Telephone: 845-4310 | Introduced Date: 02/11/1999

Attorney: Doug Bramhall | Sponsor:

SUBJECT: Employer Qualified Wages Paid For Production Of Television Program Or Movie

SUMMARY

This bill would provide a credit equal to 10% of qualified wages and salaries paid to employees and contractors retained by the taxpayer in connection with the production of a television program or motion picture produced entirely in California.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately and would apply to taxable or income years beginning on or after January 1, 1999.

LEGISLATIVE HISTORY

SB 1086 (1995/96).

SPECIFIC FINDINGS

Existing **state and federal laws** allow a taxpayer to deduct expenses paid or incurred in the ordinary course of a taxpayer's business (e.g., employee wages and benefits).

Existing state law provides various tax credits that are designed to provide tax relief for taxpayers who must incur certain expenses (e.g., renter's credit) or to influence behavior, including business practices and decisions (e.g., research credits). For instance, taxpayers engaged in a trade or business in an economic development area are allowed a hiring credit for a certain percentage of qualified wages paid to qualified employees.

This bill would provide a credit equal to 10% of qualified wages and salaries paid to employees and contractors retained by the taxpayer in connection with the production of a qualified television program or qualified motion picture.

This bill would provide definitions for "qualified wages and salaries," "motion picture," and "qualified television program or qualified motion picture."

This bill would provide an indefinite carry forward of any excess credit. Since this bill does not specify otherwise, this credit would not reduce regular tax below tentative minimum tax.

Board Position:			Department Director	Date
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Policy Considerations

This bill would raise the following policy considerations.

1. Most wage-based incentive credits in existing law define qualified wages as a percent of minimum wage, rather than allowing credit computations based upon the full amount of wages paid.

2. This credit may raise constitutional issues with regards to interstate commerce because it would allow the credit only where the movie or television program is produced entirely in California.

3. Incentives are typically designed to encourage future behavior. This bill would give a credit for wages already paid (from January 1, 1999) and for employees currently employed in the production of movies or television programs.

4. Conflicting tax policies come into play whenever a credit is provided for an expense item for which preferential treatment already is allowed in the form of an expense deduction or depreciation deduction. This bill would have the effect of providing a double benefit for deductible wages and salaries. On the other hand, making an adjustment to limit deductions or reduce basis in order to eliminate the double benefit creates a state and federal difference, which is contrary to the state's general conformity policy.

5. In addition, this bill would allow taxpayers located within an enterprise zone to claim both this credit and the enterprise zone hiring credit based on the same wage. The enterprise zone credit provisions do not restrict the taxpayer to one credit based upon a single employee.

6. This bill does not specify a repeal date or limit the number of years for the carryover. Credits typically are enacted with a repeal date to allow the Legislature to review their effectiveness. However, once a repeal date has been added and the unlimited credit carryover is allowed, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover limit since experience shows credits are typically used within eight years of being earned.

Implementation Considerations

This bill provides that, to be a "qualified television program" or "qualified motion picture," the television program or motion picture must be "produced entirely within the state." However, the definition of "motion picture" includes any phase of production, whether the production "is completely finished, that is produced, adapted, or altered . . . ." The bill provides no further definition of "qualified television program." By stating varying criteria, the bill leaves unclear whether the entire motion picture or television program must be produced in California, or whether, for instance, a motion picture made in New York (at an assumed cost of $10 million) and then "altered" in Hollywood (cut, sound track added, etc.) (at an assumed cost of $2 million of which $1 million is qualified wages) would qualify for a credit of $100,000 (10% of the $1 million in qualified wages).

The definitions of "qualified wages and salaries," "motion picture," and "qualified television program or qualified motion picture" are unclear. The meaning of "retained" with respect to contractors also is unclear. In addition, the bill does not define "television program" or "produced." Further, this bill leaves unclear the meaning of the phrase "retained by the taxpayer in connection with the production . . . ." Unclear and undefined terms may cause disputes between taxpayers and the department. Department staff is available to assist the author with any necessary amendments.

FISCAL IMPACT

Departmental Costs

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved.

Tax Revenue Estimate

The revenue impact of this bill is estimated to be as shown in the following table:

Revenue Impact of AB 358, As Introduced February 11, 1999 Effective January 1, 1999: Assumed Enacted after June 30, 1999 $ Millions		
1999-00	2000-01	2001-02
($81)	($136)	($175)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

The revenue impact of this measure would depend on the amount of qualified wages paid for qualified productions and the tax liability of qualified taxpayers.

Qualified wages were estimated from data provided by the California Employment Development Department (EDD). EDD provides employment data for SIC Code 781 (Motion Picture and Video Tape Production). EDD provides average weekly earnings for all people employed in SIC Code 78. Other activities within SIC 78 include drive-in and walk-in theaters (SIC 783) and video tape rentals (SIC 784). This estimate assumes that average wages in SIC 781 are not significantly different from the average for SIC 78 as a whole.

From this data, it was estimated that total wages paid in California for workers within SIC 781 amounted to about $10 billion during 1998 (153,000 employed at $1,292 per week for 50 weeks). This amount was reduced by 20% to account for the collective bargaining pay scale requirement and AMT (alternative minimum tax) limitations. According to IRS statistics, about 4% of wages and salaries in SIC 781 are officer compensation. Reasoning that officers' pay would be disqualified by the union wage/collective bargaining restriction, the qualified costs were reduced by another 4%.

EDD data also reveal that the average annual growth rate of employment in SIC 78 was 6.6% and for weekly wages was 6.6% for the period 1995 through 1998. These growth rates were used for projecting qualified costs for the out years of this bill. The amount of credit that may be applied against tax liability was estimated from a micro analysis of corporate returns for SIC Code 781.

BOARD POSITION

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on this bill.